

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:**DO NOT WRITE IN THIS SPACE**

Case

Date Filed

10-CA-157448

08/06/2015

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer MillerCoors, LLC		b. Tel. No. (336)627-2471
		c. Cell No.
d. Address (street, city, state ZIP code) 1863 E Meadow Rd, Eden, NC 27288-4067	e. Employer Representative Tracy Marvin, HR Manager	f. Fax No.
		g. e-Mail marvin.tracy@millercoors.com
		h. Dispute Location (City and State) Eden, NC
i. Type of Establishment (factory, nursing home, hotel) Brewery	j. Principal Product or Service Beer	k. Number of workers at dispute location 6000
l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1), (3) and (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.		
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) In about (b) (6), (b) (7)(C) 2015, the above-named employer failed and refused to consider employee (b) (6), (b) (7)(C) for an Asset Care Planner position, in retaliation for (b) (6), (b) (7)(C) union activities and in violation of the collective-bargaining agreement.		
3. Full name of party filing charge (if labor organization, give full name, including local name and number) International Brotherhood of Teamsters Local Union 391		
4a. Address (street and number, city, state, and ZIP code) PO Box 990, Greensboro, NC 27402-0990		4b. Tel. No.
		4c. Cell No.
		4d. Fax No.
		4e. e-Mail
5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)		
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.		Tel. No.
By: <i>Deth R. Cohen</i>	<i>Seth R. Cohen - attorney</i>	Office, if any, Cell No.
(signature of representative or person making charge)	Print Name and Title	Fax No.
Address: PO Box 990, Greensboro, NC 27402-0990	Date: 08/04/2015	e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

1-1431746028



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

Agency Website: www.nlr.gov
Telephone: (336)631-5201
Fax: (336)631-5210



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August 6, 2015

Tracy Marvin, HR Manager
MillerCoors, LLC
1863 E Meadow Rd
Eden, NC 27288-4067

Re: MillerCoors, LLC
Case 10-CA-157448

Dear Ms. Marvin:

Enclosed is a copy of a charge that has been filed in this case. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Compliance Officer JENNY DUNN whose telephone number is (336)631-5216. If this Board agent is not available, you may contact Regional Director CLAUDE T. HARRELL JR. whose telephone number is (404)331-2862.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlr.gov, or from an NLRB office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: We seek prompt resolutions of labor disputes. Therefore, I urge you or your representative to submit a complete written account of the facts and a statement of your position with respect to the allegations set forth in the charge as soon as possible. If the Board agent later asks for more evidence, I strongly urge you or your representative to cooperate fully by promptly presenting all evidence relevant to the investigation. In this way, the case can be fully investigated more quickly.

Full and complete cooperation includes providing witnesses to give sworn affidavits to a Board agent, and providing all relevant documentary evidence requested by the Board agent. Sending us your written account of the facts and a statement of your position is not enough to be

August 6, 2015

considered full and complete cooperation. A refusal to fully cooperate during the investigation might cause a case to be litigated unnecessarily.

In addition, either you or your representative must complete the enclosed Commerce Questionnaire to enable us to determine whether the NLRB has jurisdiction over this dispute. If you recently submitted this information in another case, or if you need assistance completing the form, please contact the Board agent.

We will not honor any request to place limitations on our use of position statements or evidence beyond those prescribed by the Freedom of Information Act and the Federal Records Act. Thus, we will not honor any claim of confidentiality except as provided by Exemption 4 of FOIA, 5 U.S.C. Sec. 552(b)(4), and any material you submit may be introduced as evidence at any hearing before an administrative law judge. We are also required by the Federal Records Act to keep copies of documents gathered in our investigation for some years after a case closes. Further, the Freedom of Information Act may require that we disclose such records in closed cases upon request, unless there is an applicable exemption. Examples of those exemptions are those that protect confidential financial information or personal privacy interests.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website, www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website, www.nlr.gov or from an NLRB office upon your request. NLRB Form 4541 offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By: 

Scott C. Thompson
Officer in Charge

Enclosures:

1. Copy of Charge
2. Commerce Questionnaire



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

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August 6, 2015

Seth R. Cohen, ESQ., Attorney
International Brotherhood of Teamsters Local Union 391
PO Box 990
Greensboro, NC 27402-0990

Re: MillerCoors, LLC
Case 10-CA-157448

Dear Mr. Cohen:

The charge that you filed in this case on August 06, 2015 has been docketed as case number 10-CA-157448. This letter tells you how to contact the Board agent who will be investigating the charge, explains your right to be represented, discusses presenting your evidence, and provides a brief explanation of our procedures, including how to submit documents to the NLRB.

Investigator: This charge is being investigated by Compliance Officer JENNY DUNN whose telephone number is (336)631-5216. If this Board agent is not available, you may contact Regional Director CLAUDE T. HARRELL JR. whose telephone number is (404)331-2862.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing *Form NLRB-4701, Notice of Appearance*. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If you are contacted by someone about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the National Labor Relations Board. Their knowledge regarding this proceeding was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

Presentation of Your Evidence: As the party who filed the charge in this case, it is your responsibility to meet with the Board agent to provide a sworn affidavit, or provide other witnesses to provide sworn affidavits, and to provide relevant documents within your possession. Because we seek to resolve labor disputes promptly, you should be ready to promptly present your affidavit(s) and other evidence. If you have not yet scheduled a date and time for the Board agent to take your affidavit, please contact the Board agent to schedule the affidavit(s). If you fail to cooperate in promptly presenting your evidence, your charge may be dismissed without investigation.

Procedures: We strongly urge everyone to submit all documents and other materials by E-Filing (not e-mailing) through our website www.nlr.gov. However, the Agency will continue to accept timely filed paper documents. Please include the case name and number indicated above on all your correspondence regarding the charge.

Information about the Agency, the procedures we follow in unfair labor practice cases and our customer service standards is available on our website www.nlr.gov or from the Regional Office upon your request. *NLRB Form 4541, Investigative Procedures* offers information that is helpful to parties involved in an investigation of an unfair labor practice charge.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By:



Scott C. Thompson
Officer in Charge



Ms. Jenny Dunn
National Labor Relations Board
Subregion 11
4035 University Pkey Ste 200
Winston Salem, NC 27106-3275

Re: MillerCoors, LLC
Case 10-CA-157448

Dear Ms. Dunn:

This letter is the statement of position by the Respondent, MillerCoors, in the above-referenced case. The charge alleges that MillerCoors (the "Company") violated Sections 8(a)(1), 8(a)(3) and 8(a)(5) when it failed to consider (b) (6), (b) (7)(C) for an Asset Care Planner position. There are contract provisions, negotiated letters of agreement, and long-standing past practices which were applied by the Company in a non-discriminatory manner with respect to the non-selection of (b) (6), (b) (7)(C) to an Asset Care Planner position, so this allegation should also either be dismissed for lack of merit, or deferred to arbitration pursuant to the *Collyer* doctrine.

a. Background Facts

MillerCoors operates breweries in a number of locations throughout the United States, including Eden, North Carolina. Many of the Company's breweries are unionized, and have been so for many years. The International Brotherhood of Teamsters, Local 391, is the exclusive representative of the production and maintenance employees at the Eden brewery. The workforce has been unionized since the brewery opened in 1978, and there have been a series of labor contracts over the years between the Company and the Teamsters. The current labor contract became effective November, 23 2014 and expires November 18, 2017. It contains a typical grievance and arbitration procedure.

b. Asset Care Planner Position

Letter of Agreement Number 1 under the current contract speaks to the selection of the Asset Care Planner position. This letter provides that the Company will select the senior employee from among those employees applying for the job who possess the demonstrated skills and qualifications for the requirements of the job. The Company is not obligated to follow seniority when one applying employee has superior qualifications to the rest. Further, the Management clause of Article 2 gives the Company the right to determine reasonable qualifications for positions.

When an Asset Care Planner position is identified as vacant the Human Resources Department sends an email containing a description of the job, the job qualifications and requirements, and instructions on how to apply for the position to all hourly employees in the Packaging Department. Employees who

respond with an interest in the posting are then vetted by Human Resources to make sure the employee is not disqualified because of active discipline in his or her file. Eligible employees then proceed to a formal and demonstrative interview by the Asset Care Manager and other designated members of management. A union steward is present in these interviews. The Asset Care Planner position is then awarded to the most senior employee among those qualified.

(b) (6), (b) (7)(C) showed an interest in the Asset Care Planner position in (b) (6), (b) (7)(C) of 2015. Per past procedure, Human Resources reviewed (b) (6), (b) (7)(C) file and determined that there was an active discipline in said file; accordingly, (b) (6), (b) (7)(C) was disqualified from further consideration. At the time (b) (6), (b) (7)(C) showed interest in the position, (b) (6) had an active verbal warning dated (b) (6), (b) (7)(C) 2014, for violating a Plant Rule. The Company denies that union activity had any role in filling the Asset Care Planner position. (b) (6), (b) (7)(C) was not considered for this position because (b) (6) was not qualified due to (b) (6) active discipline, not in retaliation for any union activities. The Company does not keep specific dates employees serve as (b) (6), (b) (7)(C). Currently, this matter is in the Third Step of the contractual grievance process.

For all of these reasons, the charge in the instant case is without merit and should be dismissed. In the alternative, the Company believes that this is an appropriate case for the NLRB to defer to arbitration under the grievance and arbitration mechanism in the labor contract.

Sincerely,



Leia DeVita

Labor Relations Specialist
MillerCoors
3939 West Highland Blvd
Milwaukee, WI 53201

To:

Jenny Dunn

(Board Agent)

National Labor Relations Board

Region 11

4035 University Parkway, Suite 200

P. O. Box 11467

Winston-Salem, NC 27116-1467

Phone: 336/631-5201

Fax: 336/631-5210

**REQUEST FOR DEFERRAL
TO THE GRIEVANCE-ARBITRATION PROCEDURE**

The Charged Party hereby notifies the National Labor Relations Board Regional Office that it is now, and for a reasonable period of time will be, willing to arbitrate the dispute(s) underlying the charge(s) in the following-named case(s), notwithstanding any contractual time limitations on the processing of the grievance(s) to arbitration.

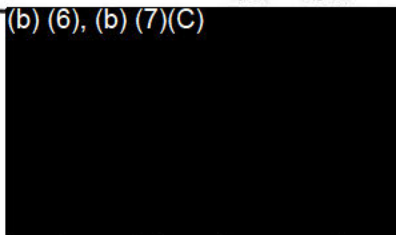
Miller Coors, LLC

Case Name

10-CA-157448

(b) (6), (b) (7)(C)

e No.



9/30/15

Date

A copy of the completed form should be transmitted to the Regional Office by fax and the form bearing the original signature should be transmitted via regular mail.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

SUBREGION 11
4035 University Pkwy Ste 200
Winston Salem, NC 27106-3275

Agency Website: www.nlrb.gov
Telephone: (336)631-5201
Fax: (336)631-5210

October 29, 2015

Seth R. Cohen, Attorney
and J. David James, Attorney
International Brotherhood of Teamsters
Local Union 391
PO Box 990
Greensboro, NC 27402-0990

Re: MillerCoors, LLC
Case 10-CA-157448

Dear Mr. Cohen and Mr. James:

We have carefully considered your charge that MillerCoors, LLC has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge because of the lack of full cooperation by the Charging Party.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax or email. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **E-File Documents**, enter the **NLRB Case Number**, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

Appeal Due Date: The appeal is due on November 12, 2015. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than November 11, 2015. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before** November 12, 2015. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after November 12, 2015, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

Claude T. Harrell Jr.
Regional Director

By:



Scott C. Thompson
Officer in Charge

Enclosure

cc: Tracy Marvin, HR Manager
MillerCoors, LLC
1863 E Meadow Rd
Eden, NC 27288-4067

Leia DeVita, Esq.
MillerCoors, LLC
3939 Highland Blvd
Milwaukee, WI 53208

Douglas J. Heckler, Esq.
MillerCoors, LLC
3939 W Highland Blvd
Milwaukee, WI 53208-2866